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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,551	02/05/2004	George Bayer	2350.421	6796
23405	7590	06/16/2006		
HESLIN ROTHENBERG FARLEY & MESITI PC 5 COLUMBIA CIRCLE ALBANY, NY 12203				
			EXAMINER	
			BAXTER, GWENDOLYN WRENN	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/773,551	BAYER ET AL.	
	Examiner Gwendolyn Baxter	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 March 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3,4,6-9 and 11-24 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 17 and 20 is/are allowed.
- 6) Claim(s) 1,3,4,6-9,11-16,18,19 and 21-24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/30/06</u> .   | 6) <input type="checkbox"/> Other: _____.                                   |

This is the second Office action for application serial number 10/773,551, Arrangements braces and methods for supporting an arm of an ornamental fixture, filed October 5, 2004. Claims 1, 3, 4, 6-9, and 11-24 are pending.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1, 3, 4, 6-9, 11, and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the preamble of independent claim 1, recites an intended use "for supporting an arm of an ornamental fixture", however, the upper surface of the elongated element has been defined in terms of the arm which has not been positively claimed but nominal recited. Consequently, it is not clear whether applicant intends to claim the combination of the brace with the arm of the ornamental fixture. If the combination is to be claimed, then delete "for" in the preamble of claim 1. Please clarify. Similar problem occurs in claims 6 and 21. For the purpose of this Office action, the subcombination of the brace only is being considered here.

In claim 18, line 6, "a support" should read --the support-- to reflect antecedence at line 4 of this claim. A similar problem occurs in claim 20, line 6.

Claim 24 provides for the use of supporting an arm of an ornamental fixture, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

In claim 24, line 1, "The arrangement" lacks proper antecedent basis. The language should read –The method-.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 7, 11, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,621,927 to Reiss. The present invention reads on Reiss as follows: Reiss teaches a brace (10) comprising an elongated element (50, 24, 70) and at least one platform (60). The elongated element has a first end (52) adapted to mount to a support (12) and a free second end (54). The upper surface is substantially conforms to a lower surface of the arm (22) of the ornamental fixture. The platform is located between the first end and the second end. The platform is adapted to support the arm (22) of the fixture. The platform comprises a plate (60) mounted to

the brace. The plate comprises a perforated plate (60, 64) adapted to mount on one or more projections (70) on the elongated element. The elongated element has at least one perforation (44). The platform comprises a surface on the elongated element.

Regarding claims 18 and 19, the method is inherent since it is predicated upon the structure.

Claims 1, 9, 18 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 1,531,266 to Anderson. The present invention reads on Anderson as follows: Anderson teaches a brace comprising an elongated element (9, 10, 13) and at least one platform (21). The elongated element has a first end (near 8) adapted to mount to a support (1) and a free second end (not numbered). The upper surface is substantially conforms to a lower surface of the arm (20) of the ornamental fixture. The platform is located between the first end and the second end. The platform is adapted to support the arm (20) of the fixture. The elongated element further comprises at least one ornament mounting hook arrangement (18).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 6, 8 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reiss. Reiss teaches the limitations of the base claim, excluding the upper surface of the elongated element conforms to a sinuous lower surface of the arm and the elongated element comprises a thickness between about 0.10 and 3.0 inches. Since the subcombination is being considered, it would have been an obvious matter of design choice to have made the elongated element sinuous shaped. This modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. Additionally, It would have been an obvious matter of design choice to have made the thickness of the elongated element between about 0.10 inches and about 3.0 inches, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Claims 12-16, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson. Anderson teaches an arm (20) and brace (9, 10, 13 and 21). The arm has a first end adapted to mount to a support (1) and a second free end. The brace comprises an elongated element (9, 10, 13) and at least one platform (21). The elongated element has a first end adapted to mount to the support (1) and a free second end (near 18). The platform is mounted to the elongated element and located between the first end and the second end of the arm and distal the first end of the arm. The platform is adapted to support the arm. The arm comprises a lower surface and the elongated member comprises an upper surface shaped to substantially conform to the lower surface of the arm, wherein the arm comprises a lower surface and the elongated

member comprises an upper surface shaped to substantially conform to the lower surface of the arm. At least one means for mounting an ornament to the brace (18). The arm comprises a length and wherein the platform is located at least half-length from the first end of the arm. However, Anderson fails to teach the arm being made from a brittle material such as glass and the upper surface of the elongated element conforms to a sinuous lower surface of the arm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the arm glass, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Additionally, it would have been an obvious matter of design choice to have made the elongated element sinuous shaped. This modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

Regarding claim 16, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the at least one means for mounting an ornament to the brace, namely the hook or u-shaped member in the elongated member for the purpose of supporting an article therein, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

***Allowable Subject Matter***

Claims 17 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach a cushioning material located on the platform in combination with the other elements recited therein.

***Response to Arguments***

Applicant's arguments with respect to claims 1, 3, 4, 6-9, and 11-24 have been considered but are moot in view of the new grounds of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

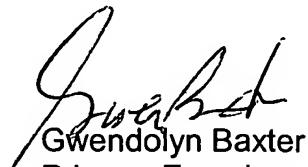
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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Baxter whose telephone number is 571-272-6814. The examiner can normally be reached on Monday-Wednesday, 8:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 571-272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gwendolyn Baxter  
Primary Examiner  
Art Unit 3632

June 9, 2006